

ESTTA Tracking number: **ESTTA353391**

Filing date: **06/17/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Serta, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2600 Forbs Avenue Hoffman Estates, IL 60192 UNITED STATES		

Attorney information	Nicole M. Murray Quarles & Brady LLP 300 North LaSalle Street Suite 4000 Chicago, IL 60656 UNITED STATES nicole.murray@quarles.com, tm-dept@quarles.com Phone:3127155241
----------------------	---

Applicant Information

Application No	77772516	Publication date	05/18/2010
Opposition Filing Date	06/17/2010	Opposition Period Ends	06/17/2010
Applicant	Restonic Corporation P.O. Box 755 Antioch, IL 60002 UNITED STATES		

Goods/Services Affected by Opposition

Class 024. All goods and services in the class are opposed, namely: mattress pads and bed sheets

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	581897	Application Date	08/21/1952
Registration Date	11/03/1953	Foreign Priority Date	NONE
Word Mark	PERFECT SLEEPER		

Design Mark	Perfect Sleeper
Description of Mark	NONE
Goods/Services	Class U032 (International Class 020). First use: First Use: 1931/12/01 First Use In Commerce: 1931/12/01 MATTRESSES

U.S. Registration No.	2037182	Application Date	03/22/1996
Registration Date	02/11/1997	Foreign Priority Date	NONE
Word Mark	PERFECT SLEEPER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1942/01/01 First Use In Commerce: 1942/01/01 mattresses, mattress foundations, mattress pads and pillows		

U.S. Registration No.	3174188	Application Date	02/06/2006
Registration Date	11/21/2006	Foreign Priority Date	NONE
Word Mark	PERFECT DAY		
Design Mark	PERFECT DAY		
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2005/07/08 First Use In Commerce: 2005/07/08 Mattresses, mattress foundations and pillows		

U.S. Registration No.	3588498	Application Date	12/10/2007
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	PERFECT MORNING		

Design Mark	PERFECT MORNING
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2008/08/26 First Use In Commerce: 2008/08/26 Mattresses, mattress foundations and pillows Class 024. First use: First Use: 2008/08/26 First Use In Commerce: 2008/08/26 Mattress pad

U.S. Registration No.	3588499	Application Date	12/10/2007
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	PERFECT EVENING		
Design Mark	PERFECT EVENING		
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2008/08/26 First Use In Commerce: 2008/08/26 Mattresses, mattress foundations and pillows Class 024. First use: First Use: 2008/08/26 First Use In Commerce: 2008/08/26 Mattress pad		

U.S. Registration No.	3606889	Application Date	10/05/2007
Registration Date	04/14/2009	Foreign Priority Date	NONE
Word Mark	PERFECT SUNRISE		

Design Mark	PERFECT SUNRISE
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2007/10/00 First Use In Commerce: 2008/01/00 Mattresses, mattress foundations and pillows

U.S. Registration No.	3772203	Application Date	12/10/2007
Registration Date	04/06/2010	Foreign Priority Date	NONE
Word Mark	PERFECT START		
Design Mark	PERFECT START		
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2008/06/23 First Use In Commerce: 2008/06/23 Mattresses and mattress foundations		

U.S. Registration No.	908014	Application Date	08/07/1970
Registration Date	02/16/1971	Foreign Priority Date	NONE
Word Mark	SERTAPEDIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U032 (International Class 020). First use: First Use: 1951/01/01 First Use In Commerce: 1951/01/01 MATTRESSES AND BOX SPRINGS		

U.S. Registration No.	2025921	Application Date	11/16/1994
-----------------------	---------	------------------	------------

Registration Date	12/24/1996	Foreign Priority Date	NONE
Word Mark	PERFECT NIGHT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1995/07/00 First Use In Commerce: 1995/07/00 mattresses and mattress foundations		

Attachments	71634275#TMSN.gif (1 page)(bytes) 78808217#TMSN.jpeg (1 page)(bytes) 77347778#TMSN.jpeg (1 page)(bytes) 77347782#TMSN.jpeg (1 page)(bytes) 77297479#TMSN.jpeg (1 page)(bytes) 77347774#TMSN.jpeg (1 page)(bytes) Notice of Opposition 77772516.pdf (4 pages)(119465 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nicole M. Murray/
Name	Nicole M. Murray
Date	06/17/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/772,516

Trademark: PERFECTPEDIC

Published: May 18, 2010

SERTA, INC.)	
)	
Opposer,)	
v.)	Opposition No. _____
)	
RESTONIC, CORP.)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Serta, Inc., a corporation existing under the laws of Delaware and doing business at 2600 Forbs Avenue, Hoffman Estates, IL 60192, believes it is or will be damaged by the registration of Application Serial No. 77/772,516 for the trademark PERFECTPEDIC and hereby opposes registration of the mark to Restonic, Corp., a corporation existing under the laws of Delaware doing business at PO Box 755, Antioch, Illinois 60002.

As grounds for its opposition, it is alleged that:

1. Serta is the owner of the registration for each of the trademarks listed below (the "Serta Trademarks"):

PERFECT SLEEPER, Reg. No. 581,897, registered on November 3, 1953 as used in connection with mattresses;

PERFECT NIGHT, Reg. No. 2,025,921, registered on December 24, 1996 as used in connection with mattresses and mattress foundations;

PERFECT SLEEPER, Reg. No. 2,037,182, registered on February 11, 1997 as used in connection with mattresses, mattress foundations, mattress pads and pillows;

PERFECT DAY, Reg. No. 3,174,188, registered on November 21, 2006 as used in connection with mattresses, mattress foundations and pillows.

PERFECT MORNING, Reg. No. 3,588,498, registered on March 10, 2009 as used in connection with mattresses, mattress foundations, and pillows; mattress pad.

PERFECT EVENING, Reg. No. 3,588,499, registered on March 10, 2009 as used in connection with mattresses, mattress foundations, and pillows; mattress pad.

PERFECT SUNRISE, Reg. No. 3,606,889, registered on April 14, 2009 as used in connection with mattresses, mattress foundations, and pillows.

PERFECT START, Reg. No. 3,772,203, registered on April 6, 2010 as used in connection with mattresses and mattress foundations.

SERTAPEDIC, Reg. No. 908,014, registered on February 16, 1971 as used in connection with mattresses and box springs.

2. Applicant seeks to register the trademark PERFECTPEDIC, for use in connection with “mattress pads and bed sheets” as evidenced by publication of the mark in the electronic Official Gazette, dated May 18, 2010.

3. Applicant applied for registration of its mark on July 1, 2009. Serta’s rights in all of its Serta Trademarks are superior to any rights Applicant may have in the trademark PERFECTPEDIC.

4. Applicant’s registration of the PERFECTPEDIC trademark is likely to cause confusion, mistake, or to deceive the purchasing public. Applicant and Serta both sell bedding products and their goods are often displayed, advertised and sold alongside each other.

5. Applicant’s mark is similar to the registered Serta Trademarks in appearance, sound and commercial impression, and Applicant and Serta are both operating in the same channels of trade, thus, consumer confusion is likely.

6. Because Applicant’s mark is similar to the Serta Trademarks, it is likely to suggest an affiliation, connection or association of Applicant and Applicant’s goods with Serta and Serta’s goods, with consequent injury to Serta, the trade and to the public.

7. Consumers will be confused or deceived by Applicant's use of a closely similar mark because both Applicant and Serta sell products in the bedding industry.

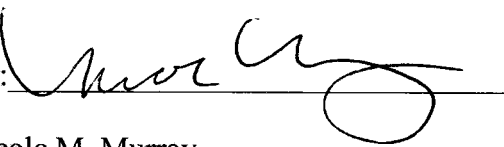
8. The use by Applicant of the mark PERFECTPEDIC will dilute and impair Serta's rights in the Serta trademarks. If Applicant is permitted to register the mark PERFECTPEDIC, such registration may eventually result in the inability of the Serta Trademarks to function as an indicator of origin.

WHEREFORE, Serta submits that, in accordance with 15 U.S.C. § 1052(d), Applicant's PERFECTPEDIC trademark is not entitled to registration, and Serta prays that registration of Applicant's PERFECTPEDIC mark be denied and this Opposition be sustained.

Please direct all correspondence in this matter to the undersigned.

Dated: June 17, 2010

SERTA, INC.

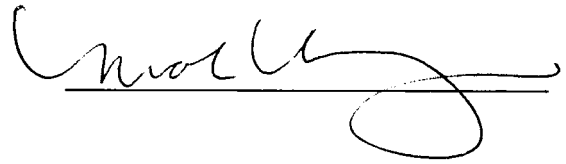
By: 

Nicole M. Murray
QUARLES & BRADY, LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654
(312) 715-5000
(312) 715-5155 (fax)
Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that on June 17, 2010, a true and correct copy of Serta's **Notice of Opposition** was served via U.S. Mail upon the following:

Robert V. Jambor
Leydig, Voit & Mayer, LTD
Two Prudential Plaza, Suite 4900
180 N. Stetson
Chicago, IL 60601-6731

A handwritten signature in black ink, appearing to read "R. Jambor", is written over a horizontal line.